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In the Supreme Court of the United States

OCTOBER TERM, 1990

INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS OF CALIFORNIA, INC., ET AL.,
Petitioners,

v.

ROBIN GEORGE AND MARCIA GEORGE,
Respondents,

On Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Fourth Appellate District

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SUPPLEMENTAL BRIEF FOR PETITIONERS

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This case involves a multi-million dollar tort judgment against a small and unpopular religious minority for emotional injuries allegedly suffered by the parents of a former member. The jury awarded compensatory damages in the amount of $3.3 million to the plaintiffs and exacted an additional $29.2 million in punitive damages (CT 2109-2121).[1]

[1] The trial judge reduced the award of compensatory damages to $2.2 million, and the award of punitive damages to $7.5 million. The Court of Appeal reversed a major element of the damages on the merits, but left standing an award of $75,000 to Robin George for the wrongful death of her father, of $400,000 in compensatory damages and $2 million in punitive damages to Marcia George for emotional distress, and of $10,000 in compensatory damages and $500,000 in punitive d mages to Marcia George for libel. With interest, the award currently stands at approximately $5.3 million, a sum that would require the religious community to sell substantially all of its places of worships and related monasteries ("ashrams").

Before this Court had even received the papers necessary to decide whether to grant certiorari in this case, respondents persuaded the courts below to enforce their judgment immediately by the sale of the petitioners' places of worship, title to which is held by a court-appointed receiver. This Court granted petitioners' application for a stay of the execution of the judgment. 110 S.Ct. 1804 (April 16, 1990). The petition was held, apparently because of its relation to *Pacific Mutual Life Ins. Co. v. Haslip*, No. 89-1279, 59 U.S.L.W. 4157 (March 4, 1991). Pursuant to Rule 15.7 of the Rules of this Court, petitioners file this supplemental brief, limited to a discussion of the effect of this Court's decision in *Haslip* on this case.

1. The petition for certiorari presents four questions. Questions 1, 2, and 4 are unrelated to punitive damages and are therefore unaffected by *Haslip*. We do not reiterate here those independent grounds for review, but urge that they not be disregarded simply because Question 3 overlaps to some extent with *Haslip*.

2. Question 3 presents a challenge to punitive damages that is rooted in the First Amendment as well as the Due Process Clause. See Pet. 24-29. The First Amendment claim is not affected by the *Haslip* decision. Indeed, the opinion of the Court in *Haslip* expressly refers (slip op. 8) to *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), which limited the availability of punitive damages in defamation cases on First Amendment grounds. Justice Scalia likewise noted in his concurring opinion that rejection of the due process argument "does not call into question the proposition that punitive damages, despite their historical sanction, can violate the First Amendment." Slip op. 15 (Scalia, J., concurring).

Indeed, after *Haslip*, the question of First Amendment limitations on punitive damages is all the more urgent. See *Haslip*, slip op. 1 (O'Connor, J., dissenting) (warning that under the present regime "[j]uries are per-

mitted to target unpopular defendants, [and] penalize unorthodox or controversial views"); and see *Electrical Workers v. Foust*, 442 U.S. 42 (1979). Without guidance from this Court, there is grave danger that the lower courts will presume that the due process standards laid down in *Haslip* (including the preponderance of the evidence test, see slip op. 19 n.11) represent the limit of constitutional protections, even for First Amendment defendants.

3. Unless the judgment is reversed on the other grounds urged in the Petition, it will be necessary, at a minimum, to vacate the decision below and remand the case to the Court of Appeal for reconsideration in light of the *Haslip* decision.

The *Haslip* majority made clear that the Due Process Clause imposes limits on the imposition of punitive damages, both with respect to the degree of discretion vested in the jury and with respect to the size of the award. See *Haslip*, slip op. 14-15 ("[i]t would be . . . inappropriate to say that, because punitive damages have been recognized for so long, their imposition is never unconstitutional"); *id.* at 15 (the "line between the constitutionally acceptable and the constitutionally unacceptable" hinges on "general concerns of reasonableness and adequate guidance from the court"); *id.* at 18 (affirming the award in *Haslip* on the ground that the appellate standards "impose[] a sufficiently definite and meaningful constraint on the discretion of Alabama fact finders in awarding punitive damages"); *id.* at 20 (size of award in relation to compensatory damages "does not cross the line into the area of constitutional impropriety"). The Court rejected the suggestion in a concurring opinion (slip op. 1-2 (Scalia, J., concurring)) that the imposition of punitive damages under traditional state common law comports with due process in all cases.

Instead, the Court painstakingly reviewed the standards and procedures for imposition of punitive damages in Alabama before concluding that they are constitutionally sufficient. In a number of important respects, the California system for imposition of punitive damages is more arbitrary, and less protected by safeguards, than that in Alabama.

One of the features of the Alabama system on which the Court relied was the careful system of post-verdict review, at both the trial and appellate levels, to "make[] certain that the punitive damages are reasonable in their amount and rational in light of their purpose . . ." (slip op. 18). Under Alabama law, this review is based on seven "detailed substantive standards" (slip op. 17). In California, by contrast, punitive damages may be reversed " 'only when the entire record, viewed favorably to the judgment, indicates the award was rendered as a result of passion and prejudice.' " Pet. App. 73a, quoting *Walker v. Signal Companies, Inc.*, 84 Cal. App. 3d 982, 997, 149 Cal. Rptr. 119 (1978).[2] In cases not satisfying this description, there is no review for excessiveness under California law.

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[2] Where unpopular religious minorities are involved, appellate courts should be especially sensitive to the possibility that passion and prejudice may have affected the verdict. In this case, however, a punitive damages verdict large enough by the trial court's own estimation (Pet. App. 75a) to wipe out the religious organization was affirmed despite the fact that literally weeks of trial were devoted to inflammatory testimony by disgruntled former members and anti-"cult" "experts" who mocked and distorted Krishna religious teachings (see, *e.g.*, 22 RT 4268-69, *id.* at 4278; 27 RT 5172-74, *id.* at 5180; 31 RT 5941, *id.* at 5977). In addition, plaintiffs' counsel was permitted to analogize the religion of Krishna Consciousness to "Dracula" (44 RT 8513-14), to call the religion a "pernicious evil" (45 RT 8653), among other pejoratives, and to urge the the jurors to "imagine your child going to the Hare Krishna temple," where the child would be taught that his parents are "meat eating karmi demon[s]" (*id.* at 8599). See Pet. 5, 22. It is hard to imagine what evidence would have persuaded the court that the verdict was infected with passion and prejudice if this evidence did not.

Moreover, even if this hurdle is overcome, the appellate standard of review falls far short of the standards employed in Alabama. The factors considered in California are simply "the nature of the defendant's acts, the amount of compensatory damages awarded and the wealth of the defendant" (Pet. App. 73a). These nebulous factors manifestly fail to provide "a sufficiently definite and meaningful constraint on the discretion of [California] fact finders in awarding punitive damages." *Haslip*, slip op. 18.

Another important feature of Alabama procedure requires the appellate court to scrutinize "the impact on innocent third parties." *Haslip*, slip op. 17. California law provides no such safeguard. This is particularly pertinent to this case, because the real victims of the punitive damages award in this case are the many thousands of Hare Krishna and other Hindu worshippers who stand to lose their places of worship, their means of propagating their faith, and possibly even their ability to publish their holy books, on account of the misdeeds of a few church officials no longer even associated with the religion. In analogous contexts, this Court has held that such effects on "blameless or unknowing" persons "who took no part in the commission of the tort" are a sufficient ground for refusing to impose punitive damages. *Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 267 (1981) (municipal taxpayers); *Electrical Workers v. Foust, supra* (labor union members).

Finally, the size of the punitive damages award in this case is constitutionally suspect under the *Haslip* standards. In *Haslip*, the Court noted that an award "more than 4 times the amount of compensatory damages . . . may be close to the line." Slip op. 20. Here, the jury awarded punitive damages almost 9 times the amount of compensatory damages.[3] Even after remitti-

[3] These figures exclude the $75,000 compensatory award for wrongful death, since California law precludes any award of punitive damages for wrongful death.

tur and appellate review, punitive damages were over 6 times the compensatory damages on the corresponding causes of action.[4] In affirming the award, the court below relied on California precedents approving punitive damages awards even 30 times compensatory damages. Pet. App. 74a-75a, citing *Devlin v. Kearney Mesa AMC/Jeep/Renault*, 155 Cal. App. 3d 381, 393-396 (1984) (ratio of 32:1), and *Downey Sav. & Loan Ass'n v. Ohio Cas. Ins. Co.*, 189 Cal. App. 3d 1072, 1097-1100, 234 Cal. Rptr. 835 (1987) (ratio of 32.7:1). Moreover, in contrast to *Haslip*, the amount of the award in this case approaches (if it does not exceed) the entire net worth of the defendants, including their temples and ashrams.[5] As Justice Kennedy noted in his concurring opinion in *Has-*

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[4] Even this calculation probably understates the excessiveness of the punitive damages award. The verdict in favor of Marcia George includes a $400,000 award of "compensatory" damages for purely emotional injuries she suffered as a result of her daughter's one-year sojourn with the Krishna Consciousness movement. It is not unlikely that this $400,000 "compensatory" verdict already includes a substantial "punitive" award. Ironically, although the Court of Appeal frankly admitted that it is difficult to quantify damages that are primarily if not exclusively noneconomic (Marcia George had no medical bills or any other out-of-pocket expenses related to her alleged emotional injuries), it stated that it would impose massive punitive damages on petitioners so as to avoid "slavish devotion to a mathematical god of proportionality." Pet. App. 76a n.52.

[5] The trial court acknowledged that without any evidence of net worth, "the jury lacked some guidelines upon which to predicate its award of punitive damages." Pet. App. at 86a. Nevertheless, the judge authorized a judgment of $10 million because he evidently believed that the commercial value of the land and improvements (temples and ashrams) held by petitioners was worth that amount. See Pet. App. 75a. The California Supreme Court is currently deciding whether the plaintiff or the defendant must prove a defendant's net worth before a jury can award punitive damages. *Adams v. Murakami*, 219 Cal. App. 3d 647 (1990), rev. granted, 270 Cal. Rptr. 816 (June 27, 1990). On remand, the California courts will be able to consider the effect of that decision on this case.

lip, "the extreme amount of an award compared to the actual damage inflicted can be some evidence of bias or prejudice." Slip op. 3 (Kennedy, J., concurring).

CONCLUSION

The petition for a writ of certiorari should be granted, and the Court should review petitioners' First Amendment claims on the merits. If the judgment is not reversed on those grounds, the case should be remanded to the Court of Appeal to determine whether the punitive damages award comports with the due process standards enunciated in *Haslip*.

Respectfully submitted,

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